

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	MEMORANDUM IN SUPPORT OF
vs.)	MOTION
)	
HAWAIIAN EXPRESS SERVICE,)	
INC., a California corporation; et al.)	
)	
Defendants.)	
_____)	

MEMORANDUM IN SUPPORT OF MOTION

Mr. Berry has been maintaining the business records of Fleming Companies, Inc. ("Fleming")'s former freight forwarder Atlantic Pacific International, Inc. ("API") since as far back as the Lokilani and Marlene Lindsey trials when they were subject to grand jury subpoena.

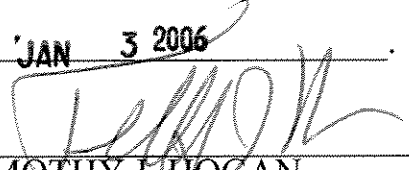
Fleming's current attorneys have themselves sought to discover the location of these records in Mr. Berry's deposition. *See* Excerpt of the Deposition of Wayne Berry taken on May 18, 2005 in *Wayne Berry v. Hawaiian Express Service, Inc.*. A true and correct copy of which is attached Declaration of Timothy J. Hogan ("Hogan Dec.") Exhibit A at 24:20 to 26:25. Upon information

and belief, Fleming's management remains under criminal investigation, and the physical location of these records has nothing to do with this case, the PCT's claim in the deposition notwithstanding. For that reason, Mr. Berry respectfully requests that the Court rule *In Limine* to prohibit any questioning regarding the location of the API records.

For the reasons stated, Mr. Berry requests that the Court rule that the Defendants should be prohibited from adducing evidence related *In Limine* to the location of the API records.

Dated: Honolulu, Hawaii

JAN 3 2006


TIMOTHY J. HOGAN
Attorney for Plaintiff